



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 12, 2004


Barry Needleman, Esq.
McLane Graf Raulerson & Middleton
15 North Main Street
Concord, NH 03301-4945

Re: Docket No. AF 04-005 - Administrative Fine by Consent Agreement

Dear Attorney Needleman:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on March 11, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,


Michael Schaffan
Legal Assistant

cc: Robert R. Scott, Director, Air Resources Division
Gretchen Rule, DES Legal Unit
Mark R. Harbaugh, DES Legal Unit
Pamela Monroe, DES ARD
Raymond Walters, DES ARD
DES Public Information Officer



The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
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Mectrol Corporation
9 Northwestern Drive
Salem, NH 03079

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 04-005

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division ("Division"), and Mectrol Corporation pursuant to RSA 125-C:15, I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division, ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Mectrol Corporation ("Mectrol") is a corporation incorporated under the laws of the State of Delaware and registered to operate in the State of New Hampshire, having a mailing address of 9 Northwestern Drive, Salem, NH 03079.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env- A 100 et seq.
2. RSA 125-C:15, I-b(b) authorizes DES to impose administrative fines of up to \$2,000 per violation for violations of RSA 125-C and rules adopted pursuant thereto.
3. RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 600.
4. RSA 125-C:2,XI defines a stationary source as "any building, structure, facility, or installation which emits or which may emit any regulated air pollutant".
5. Mectrol manufactures steel- and Kevlar-reinforced polyurethane timing belts and speed reducers at its facility on Northwestern Drive in Salem, NH ("the Facility").

6. Mectrol's operations include the application of adhesives, and the extrusion and casting of polyurethane polymers, onto steel and Kevlar cording. These operations result in emissions to the ambient air. Accordingly, Mectrol is subject to N.H. Admin. Rules Env-A 100 et seq.
7. Mectrol dilutes the adhesives prior to application to the Kevlar or steel reinforcing belts. Prior to October 2001, Mectrol used methyl ethyl ketone (CAS# 78-93-3) as the primary diluent. The methyl ethyl ketone ("MEK") vaporizes during the production process and is released to the ambient air.
8. Env-A 101.225 defines a regulated air pollutant as, among other things, any pollutant listed in section 112(b) List of Hazardous Air Pollutants ("HAP") of the Clean Air Act.
9. MEK is listed as a HAP in Section 112(b) of the Clean Air Act, and therefore, Mectrol emits a regulated air pollutant and is a stationary source.
10. Env-A 101.168(b)(1)a. defines a major source as, among other things, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Clean Air Act.
11. Env-A 609.01(a) and Env-A 607.01(n) (effective 12-13-95) require sources to submit a permit application, on or before June 30, 1996, for a Title V permit or a State Permit to Operate limiting potential emissions, if the facility's potential emissions exceed a major source threshold as defined in Env-A 101.
12. Env-A 607.01(g) requires a source to obtain a temporary permit if its actual emissions of volatile organic compounds ("VOC's") are greater than 10 tons per year.
13. Env-A 607.01(x) requires a source to obtain a temporary permit if it is subject to the rules governing reasonably available control technology ("RACT") as contained in Env-A 1200.
14. On October 31, 2001, in a meeting with DES, Mectrol self-reported violations of the NH Administrative Rules, including operating without a permit and failure to comply with VOC RACT.
15. On November 30, 2001, DES sent Mectrol a Request for Information as a follow-up to the October 31 meeting. The letter requested that Mectrol submit to DES by December 31, 2001 the following information:
 - a. Actual emissions of all pollutants for calendar years 1990 through 2000;
 - b. A demonstration of compliance with VOC RACT, and the calculation of any excess emissions, for all years since Mectrol's potential emissions of VOC's exceeded 10 tons;
 - c. An applicability determination and compliance determination for the new Source Performance Standard, 40 CFR 60, Subpart VVV;
 - d. A compliance determination showing that all regulated toxic air pollutants are in compliance with the ambient air limits of Env-A 1400;
 - e. An application for a Title V permit, or a state permit to operate that restricts actual annual emissions below major source thresholds; and

- f. A compliance plan with specific milestone dates and timeframes to comply with all applicable requirements.

16. On December 27, 2001, on behalf of Mectrol, the law firm of McLane, Graf, Raulerson & Middleton ("McLane") responded to DES's Request for Information. The written response included the following:

- a. An application for a State Permit to Operate limiting Mectrol's emissions to less than the major source thresholds;
- b. A compliance determination for Mectrol's emissions of air toxics;
- c. Emission reports for calendar years 1994 through 2000; and
- d. A check in the amount of \$2,518.54 for the past-due emission-based fees for calendar years 1994 through 2000.

17. In the December 27, 2001 response, McLane reported that Mectrol had added an additional process line (Linear Line #2) to its facility in May 1996. Linear Line #2 became operational in August 1996. Prior to October 2001, Mectrol used MEK as the primary diluent of the adhesives it applied to Kevlar or steel reinforcing belts. MEK is both a VOC and a HAP. Mectrol's potential to emit MEK exceeded 10 tons after it installed Linear Line #2. Mectrol's actual emissions of MEK never exceeded 10 tons. In October of 2001, Mectrol switched from using MEK to acetone, which is not a HAP, and is also an exempt VOC. The switch to acetone decreased Mectrol's potential to emit MEK below the 10 ton major source threshold.

18. Env-A 1204.10(a) requires a source to comply with VOC RACT if its theoretical potential emissions from the coating of paper, fabric, film, and foil substrates are above 10 tons per year.

19. In May 1996, after installation of Linear Line #2, Mectrol became subject to VOC RACT, specifically Env-A 1204.10 Applicability Criteria and Compliance Standards for Coating of Paper, Fabric, Film and Foil Substrates, when its potential emissions from coating of Kevlar cord exceeded 10 tons per year. However, Mectrol's actual VOC emissions from Kevlar cord coating on its process lines never exceeded 10 tons per year. In October of 2001, Mectrol's switch from MEK to the exempt VOC acetone reduced its potential VOC emissions from Kevlar cord coating to less than 10 tons per year. Therefore, since reducing its potential VOC emissions from Kevlar cord coating to less than 10 tons per year, Mectrol is no longer subject to the VOC RACT limits of Env-A 1204.10.

20. Prior to reducing its potential VOC emissions from Kevlar cord coating to less than 10 tons per year, and while it was subject to Env-A 1204.10(c), Mectrol was required to comply with the VOC RACT limit of 2.9 lbs VOC per gallon of coating as applied, excluding water and exempt compounds, for this process.

21. During calendar years 1996 through 2000, for its coating of Kevlar cord subject to Env-A 1204.10, Mectrol used a VOC-containing coating that contained less than 2.9 lbs VOC per gallon of coating as applied, excluding water and exempt compounds. However, from January through October of 2001, Mectrol used a coating with a VOC content that exceeded this limit and, therefore, failed to comply with VOC RACT.

22. Env-A 1204.15(a) requires a source to comply with VOC RACT if its theoretical potential emissions from the coating of miscellaneous metal parts and products are above 10 tons per year.

23. In May 1996, after installation of Linear Line #2, Mectrol became subject to VOC RACT, specifically Env-A 1204.15 Applicability Criteria and Compliance Standards for Coating of Miscellaneous Metal Parts, when its potential emissions from steel cord coating exceeded 10 tons of VOC's. In calendar year 2000, Mectrol's actual VOC emissions from steel cord coating exceeded 10 tons. In October of 2001, Mectrol's switch from MEK to the exempt VOC acetone reduced its actual and potential VOC emissions from steel cord coating to less than 10 tons per year. However, since Mectrol's actual VOC emissions exceeded 10 tons in 2000, Mectrol will remain subject to Env-A 1204.15.

24. Since Mectrol's potential and actual VOC emissions exceeded 10 tons per year from the coating of miscellaneous metal parts, Mectrol was required by Env-A 1204.15(c)(4) to comply with the VOC RACT limit of 3.0 lbs VOC per gallon of coating, as applied, excluding water and exempt compounds, from this process.

25. Env-A 3100 (effective January 21, 1997) allows sources to purchase and use Discrete Emissions Reductions ("DERs"), upon approval by DES, for compliance with VOC RACT.

26. On December 11, 2001, after Mectrol discovered it was operating in violation of NH Administrative Rules, Mectrol filed a "Notice of Intent to Use DERs" with DES, and purchased 10 tons of DERs. In a letter to DES dated December 27, 2001, Mectrol stated that "has purchased NOx DERs to offset future VOC emissions in the near term" and that "it may have already have satisfied its VOC RACT compliance obligations".

27. From May 1996 until December 11, 2001, Mectrol failed to comply with the VOC RACT limit of 3.0 lbs VOC per gallon of coating for the steel cord coating process, by using VOC containing coatings which exceeded this VOC limit.

28. On September 6, 2002, Mectrol met with DES to discuss various strategies that were available to comply with the requirements of VOC RACT. During the meeting, Mectrol provided DES with a summary of its emissions for calendar year 2001.

29. On November 21, 2002, Mectrol sent DES a letter stating that it intended to comply with VOC RACT by purchasing DERs.

30. Based upon information submitted by McLane and Mectrol on December 27, 2001 and September 6, 2002, respectively, DES has calculated that Mectrol emitted 20.68 tons of excess VOC's during the period of 1994 through 2001.

31. Env-A 901.03(b) and (c) and Env-A 901.04 (effective 11-15-92), and Env-A 903.02, Env-A 904.02 and Env-A 904.03 (effective 4-23-99) require a source subject to the permitting requirements of Env-A 600 to keep records of process data and VOC usage and emissions. Mectrol first required a permit and became subject to the recordkeeping requirements of Env-A 900 when it installed Linear Line #2, increasing its potential to emit VOC's from its metal coating operations to greater than 10 tons. Mectrol does not have all the records required by Env-A 900 for calendar years 1994 through 2001, but it does have sufficient records to calculate its overall annual emissions of VOC's and HAP's.

32. Env-A 901.05 (effective 11-15-92) and Env-A 907.01 and Env-A 908 (effective 4-23-99) require a source subject to the permitting requirements of Env-A 600 to submit annual reports of process data and VOC usage and emissions by April 15 of the following calendar year. Mectrol first required a permit and became subject to the reporting requirements of Env-A 900 in 1996, and was required to submit the 1996 data required by Env-A 900 by April 15, 1997. Mectrol did not timely submit the annual emissions data required to be submitted to DES for calendar years 1996 through 2001. Ultimately, on December 27, 2001, McLane submitted to DES the data for calendar years 1996 through 2000, and on September 6, 2002, Mectrol submitted the data for calendar year 2001.

33. Env-A 1406.01 (effective 05-08-98) requires all stationary sources or devices that emit a regulated toxic air pollutant ("RTAP") into the ambient air to comply with the ambient air limits established in Env-A 1400 by performing a compliance determination using one of the methods specified in Env-A 1406.02 through 1406.05. If the compliance determination demonstrates any exceedance of an ambient air limit ("AAL"), then the source was required to submit a compliance plan, with a permit application, demonstrating how it will comply with the AAL's prior to May 8, 2001.

34. At the time of the October 31, 2001 meeting between Mectrol and DES, Mectrol had not performed the compliance determination for emissions of RTAP's as required by Env-A 1406.01. McLane did submit the compliance determination demonstrating compliance on behalf of Mectrol on December 27, 2001.

35. Env-A 704.01 requires any applicant, owner or operator of a stationary source, area source, or device which requires a temporary permit, state permit to operate, Title V operating permit, or any combination of the foregoing permits pursuant to Env-A 600, to pay annual emission-based fees. The fees must be submitted to DES no later than October 15 for the previous calendar year, starting in calendar year 1995 for calendar year 1994 actual emissions.

36. At the time of the October 31, 2001 meeting between Mectrol and DES, Mectrol had not paid any emission-based fees. McLane did submit a check in the amount of \$2,518.54 for the past-due emission-based fees for calendar years 1994 through 2000 on behalf of Mectrol on December 27, 2001.

37. On June 16, 2003, DES issued Mectrol RACT Order ARD-03-002 ("the Order"). The Order authorizes Mectrol to comply with VOC RACT by purchasing DERs for the coatings which exceed the VOC content limit of 3.0 lb VOC per gallon of coating, as applied, excluding water and exempt compounds, specified in Env-A 1204.15(c)(4).

IV. ALLEGATIONS

1. Mectrol violated RSA 125-C:11,I-a, Env-A 607.01(n) and 609.05(e)(2) by operating without a Title V Permit or a State Permit to Operate from May 1997 until October 2001.

2. Mectrol violated RSA 125-C:11,I and Env-A 607.01(x) by failing to obtain a Temporary Permit or State Permit to Operate from May 1996 until January 2002.

3. Mectrol violated RSA 125-C:11,I and Env-A 607.01 (g) by failing to obtain a Temporary Permit or State Permit to Operate during calendar year 2000.

4. Mectrol violated Env-A 1204.10(c) by using VOC-containing coatings for coating of Kevlar cord that exceeded the VOC RACT limit of 2.9 lb VOC/gal as applied, excluding water and exempt compounds, from January 2001 through October 2001.
5. Mectrol violated Env-A 1204.15(c)(4) by using VOC-containing coatings for coating of steel cord that exceeded the VOC RACT limit of 3.0 lb VOC/gal as applied, excluding water and exempt compounds, from May 1996 until December 11, 2001.
6. Mectrol violated Env-A 901.03(b) and (c) and Env-A 901.04 (effective 11-15-92), and Env-A 903.02, Env-A 904.02 and Env-A 904.03 (effective 4-23-99) by failing to keep required records for calendar years 1994 through 2001.
7. Mectrol violated Env-A 901.05 (effective 11-15-92) and Env-A 907.01 and Env-A 908 (effective 4-23-99) by failing to submit to DES annual reports of process data and VOC usage and emissions for calendar years 1994 through 2001.
8. Mectrol violated Env-A 1406.01 (effective 05-08-98), by failing to perform a compliance determination for its emissions of regulated toxic air pollutants prior to May 8, 2001, until performance of the compliance determination on December 27, 2001.
9. Mectrol violated Env-A 704.01 by failing to pay the annual emission-based fee to DES for calendar years 1994 through 2000, due no later than October 15 of the following calendar year.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES has determined the violation identified in Paragraph IV.1 to be major deviation from the requirements with a major potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$1,501-\$2,000. Since Mectrol's actual HAP emissions did not exceed the 10 ton major source threshold, although it did emit 9.83 tons of MEK in calendar year 2000, DES has determined a fine of \$1,501 per violation. DES is assessing \$1,501 for each month of the 54 month period that Mectrol operated without a Title V permit or a state permit that restricted its emissions to less than the major source threshold. Accordingly, DES has calculated a fine of \$81,054 for this violation. However, since Mectrol self-reported the violations, and the DES Compliance Assurance Response Policy allows a reduction in penalties for self-reporting, DES is reducing the fine by for a total fine of \$36,475 for this violation.
2. For the violations identified in Paragraphs IV.2 and IV.3, DES is not seeking a fine, because the period when Mectrol's potential emissions exceeded the major source threshold has been addressed by Paragraph V.1.
3. For the violations identified in Paragraphs IV.4 and IV.5, pursuant to Env-A 3100, Mectrol agrees to purchase 23 DERs (13 non-ozone season and 10 ozone season DERs) within 30 days of the effective date of this Administrative Fine by Consent. Any DERs purchased by Mectrol prior to the effective date of this Administrative Fine by Consent will be applied to excess VOC emissions generated after calendar year 2001.

4. For the violations identified in Paragraphs IV.6 and IV.7, DES is not seeking a fine, because DES considers these recordkeeping and reporting activities to be part of maintaining a permit and as such have been addressed in Paragraphs V.1 and V.2.

5. For the violation identified in Paragraph IV.8, DES is not seeking a fine, because although Mectrol did perform the determination after the date was required, the determination did demonstrate compliance with the ambient air limits for air toxics.

6. For the violation identified in Paragraph IV.9, DES is not seeking a fine, because of Mectrol's small number of actual annual emissions, and because the economic benefit for its late payment of fees is negligible.

7. Mectrol agrees to pay the \$36,475 fine specified in paragraph V.1 upon execution of this Administrative Fine by Consent by Mectrol. DES agrees to hold payment until the Agreement has been signed by the Director of the Air Resources Division and the Commissioner of the Department of Environmental Services.

8. Payment under Paragraph V.1 above shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

9. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

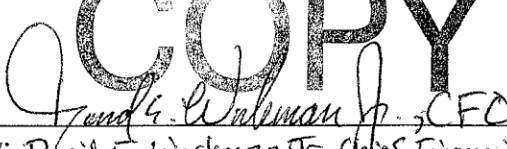
10. By executing this Administrative Fine by Consent, Mectrol waives its right to a hearing on or any appeal of the administrative fines identified in Section V, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction. Mectrol shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Mectrol and alleging violations of the New Hampshire Code of Admin Rules enumerated herein, or in any proceeding before DES to enforce this agreement. Other than such enforcement action, DES shall pursue no further administrative action against Mectrol relative to the allegations contained herein.

11. The parties have entered into this Administrative Fine by Consent to avoid the time and cost of litigation. Except as described in Paragraph 10 above, this agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Mectrol; (ii) an admission by Mectrol or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Mectrol might raise in any third party proceeding.

12. The effective date of this Administrative Fine by Consent shall be the date on which it has been signed by an authorized representative of Mectrol, the Director of the Air Resources Division and the Commissioner of DES.


13 No failure by the Division to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

Mectrol Corporation


COPY

By: David E. Workman Jr, Chief Financial Officer
Duly Authorized

2/27/2004
Date

Department of Environmental Services

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Robert R. Scott, Director
Air Resources Division

4 MAR 04
Date

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Michael P. Nolin, Commissioner
Department of Environmental Services

03 11 04
Date

cc: R. Scott, Director, DES ARD
M. Harbaugh, DES Legal Unit
R. Kurowski, EPA, Region I
P. Smith, Chairman of Selectmen, Town of Salem
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